

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK PACOE
Supervising Deputy Attorney General
3 REBECCA M. HEINSTEIN, State Bar No. 173202
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Amended Accusation
Against:

Case No. 2005-24

12 **CANDYCE ANN WARREN**
13 4509 Angel Court
Antioch, CA 94509

FIRST
AMENDED ACCUSATION

14 Registered Nurse License No. 514114

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Amended
21 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
22 Nursing.

23 2. On or about August 9, 1995, the Board of Registered Nursing issued
24 Registered Nurse Number 514114 to Candyce Ann Warren ("Respondent"). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2009, unless renewed.

27 / / /

28 / / /

JURISDICTION

3. This First Amended Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

....

7. Title 16, California Code of Regulations, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

8. Title 16, California Code of Regulations, section 1443.5, states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

1 (1) Formulates a nursing diagnosis through observation of the client's physical
2 condition and behavior, and through interpretation of information obtained from the client and
3 others, including the health team.

4 (2) Formulates a care plan, in collaboration with the client, which ensures that
5 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
6 protection, and for disease prevention and restorative measures.

7 (3) Performs skills essential to the kind of nursing action to be taken, explains the
8 health treatment to the client and family and teaches the client and family how to care for the
9 client's health needs.

10 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
11 subordinates and on the preparation and capability needed in the tasks to be delegated, and
12 effectively supervises nursing care being given by subordinates.

13 (5) Evaluates the effectiveness of the care plan through observation of the client's
14 physical condition and behavior, signs and symptoms of illness, and reactions to treatment and
15 through communication with the client and health team members, and modifies the plan as
16 needed.

17 (6) Acts as the client's advocate, as circumstances require, by initiating action to
18 improve health care or to change decisions or activities which are against the interests or wishes
19 of the client, and by giving the client the opportunity to make informed decisions about health
20 care before it is provided."

21 9. Title 16, California Code of Regulations, section 1442 states:

22 "As used in Section 2761 of the code, 'gross negligence' includes an extreme
23 departure from the standard of care which, under similar circumstances, would have ordinarily
24 been exercised by a competent registered nurse. Such an extreme departure means the repeated
25 failure to provide nursing care as required or failure to provide care or to exercise ordinary
26 precaution in a single situation which the nurse knew, or should have known,
27 could have jeopardized the client's health or life."

28 / / /

1 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
2 request the administrative law judge to direct a licensee found to have committed a violation or
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
4 and enforcement of the case.

5 **PATIENT J.G.**

6 **FACTUAL BACKGROUND**

7 11. On or about October 20, 1999, Respondent was on duty as a registered
8 nurse in the Labor and Delivery Unit at John Muir Medical Center ("John Muir") in Walnut
9 Creek. At approximately 17:45 hours, Respondent admitted Patient J.G.¹ for an induction of
10 labor, which began at approximately 20:06 hours.

11 12. On or about October 21, 1999, at approximately 05:00 hours, Patient J.G.
12 was administered Pitocin. At approximately 07:27 hours, Patient J.G. was administered an
13 epidural. At approximately 15:15 hours, Respondent and Cindy McKinnon, R.N. ("McKinnon")
14 assumed care of Patient J.G. Respondent was assigned as a preceptor for McKinnon.

15 13. At approximately 16:52 hours, Patient J.G. was "complete" and 10
16 centimeters dilated. From approximately 17:05 hours to 17:21 hours, the fetal monitor tracing
17 showed a fetal heart rate above 160. At approximately 17:12 hours, McKinnon documented that
18 the fetal heart rate was in the 160's and charted it as "reassuring." At approximately 17:15 hours,
19 Patient J.G.'s Obstetrician/Gynecologist, Alan Kaplan, M.D., was present. At approximately
20 17:21 hours, Dr. Kaplan attempted to rotate the fetus into an anterior position. At approximately
21 17:26, oxygen was applied. At approximately 17:50, McKinnon documented late fetal heart rate
22 decelerations. At approximately 17:58 hours, the Pitocin was discontinued. At approximately
23 18:10, Patient J.G. was prepared for a cesarean section and moved to the operating room. A baby
24 girl, C.G., was delivered at approximately 18:23 hours and needed to be resuscitated. On or
25 about March 25, 2001, C.G. was diagnosed with cerebral palsy.

26 ///

27 1. Initials are used in order to preserve confidentiality. Full patient names will be
28 disclosed pursuant to a request for discovery.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Incompetence)**

3 14. Respondent is subject to disciplinary action under section 2761(a)(1) of
4 the Code on the grounds of unprofessional conduct in that on or about October 21, 1999, while
5 on duty as a registered nurse in the Labor and Delivery Unit at John Muir, Respondent was guilty
6 of incompetence, within the meaning of Title 16, California Code of Regulations section 1443,
7 when she assumed the care of Patient J.G., in the following respects:

8 a. Respondent was incompetent in her fetal assessment at 17:12 hours in that
9 she failed to identify and accurately document a non-reassuring fetal heart rate pattern, or
10 tachycardia. Respondent failed to intervene appropriately to the tachycardia in that she failed to
11 notify a physician, failed to take the temperature of Patient J.G., failed to administer an IV bolus,
12 failed to reposition Patient J.G., failed to administer oxygen, and failed to monitor Patient J.G.'s
13 vital signs, which had a potential to cause harm to the fetus.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Incompetence)**

16 15. Respondent is subject to disciplinary action under section 2761(a)(1) of
17 the Code on the grounds of unprofessional conduct in that on or about October 21, 1999, while
18 on duty as a registered nurse in the Labor and Delivery Unit at John Muir, Respondent was guilty
19 of incompetence, within the meaning of Title 16, California Code of Regulations section 1443,
20 when she assumed the care of Patient J.G., in the following respects:

21 a. Respondent was incompetent in that she delayed intrauterine resuscitation
22 in response to late fetal heart rate decelerations documented at 17:50 hours. Respondent failed to
23 reposition Patient J.G., failed to administer an IV bolus, and delayed until 17:58 hours to
24 discontinue the Pitocin, which had a potential to cause harm to the fetus.

25 **PATIENT J.W.**

26 **FACTUAL BACKGROUND**

27 16. On or about November 23, 2002, Respondent was on duty as a registered
28 nurse in the Labor and Delivery Unit at John Muir Medical Center ("John Muir") in Walnut

1 Creek. At approximately 21:09 hours, Respondent admitted Patient J.W.,² with complaints of
2 labor. Respondent placed Patient J.W. on an electronic fetal monitor.

3 17. At approximately 22:07 hours, Respondent charted a fetal heart rate
4 baseline of 114-126, which is a reassuring fetal heart rate. At approximately 22:27 hours,
5 Respondent placed Patient J.W. on a telemetry monitor. Starting at approximately 22:27 hours,
6 the fetal heart rate tracing became spotty and absent at times for up to a minute. At
7 approximately 22:31 hours, Respondent charted a fetal heart rate baseline of 114-124.

8 18. At approximately 22:52 hours, Respondent charted that Patient J.W.
9 requested an epidural. At approximately 22:54 hours, Respondent charted that the telemetry
10 monitor was tracing the maternal heart rate, rather than that of the fetus. At approximately 23:13
11 hours, Respondent reported to the registered nurse assigned to the next shift.

12 19. At approximately 23:38 hours, the epidural was completed. At
13 approximately 23:41 hours, a fetal heart tone of 120 was noted, but the tracing was poor and
14 registered at 120 for only approximately four (4) seconds. At approximately 23:50 hours, a fetal
15 spiral electrode was placed and no fetal heart tones were found. A physician was paged and
16 present at the bedside by approximately 23:55 hours. At approximately 23:57 hours, a bedside
17 ultrasound was performed, which revealed no fetal heart movement. At approximately 00:14
18 hours, Patient J.W. was transferred to the operating room and a stillborn baby was delivered at
19 approximately 00:21 hours.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Gross Negligence)**

22 20. Respondent is subject to disciplinary action under section 2761(a)(1) of
23 the Code on the grounds of unprofessional conduct in that on or about November 23, 2002,
24 while on duty as a registered nurse in the Labor and Delivery Unit at John Muir, Respondent was
25 guilty of gross negligence, within the meaning of Title 16, California Code of Regulations
26 section 1442, when she assumed the care of Patient J.W., in the following respects:

27 2. Initials are used in order to preserve confidentiality. Full patient names will be
28 disclosed pursuant to a request for discovery.

1 a. From approximately 22:27 hours to 23:13 hours, Respondent failed to
2 properly monitor the fetal heart rate.

3 b. Respondent failed to notify a physician when she was unable to assess the
4 fetal heart rate externally.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Incompetence)**

7 21. Respondent is subject to disciplinary action under section 2761(a)(1) of
8 the Code on the grounds of unprofessional conduct in that on or about November 23, 2002,
9 while on duty as a registered nurse in the Labor and Delivery Unit at John Muir, Respondent was
10 guilty of incompetence, within the meaning of Title 16, California Code of Regulations section
11 1443, when she assumed the care of Patient J.W., in the following respects:

12 a. Respondent failed to document Patient J.W.'s response to the pain
13 interventions implemented by Respondent, such as telemetry monitoring, ambulating and the use
14 of a birthing ball.

15 **PRAYER**

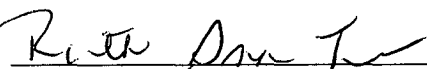
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein
17 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse Number 514114, issued to
19 Candyce Ann Warren.

20 2. Ordering Candyce Ann Warren to pay the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;

23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 8/12/08

25
26 
27 RUTH ANN TERRY, M.P.H., R.N.
28 Executive Officer
Board of Registered Nursing
State of California
Complainant